

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**ELITE FUEL EIGHT, INC.,
IOWA GAS GROUP, INC.,
USA GAS SUPPLY INC. AND
ISH OBEROI, INDIVIDUALLY**

**UST NO. 198607423
3733 Easton Blvd., Des Moines, IA**

**ADMINISTRATIVE ORDER
NO. 2010-UT- 11**

To: Elite Fuel Eight, Inc. Reg. Agent, Ish Oberoi 340 N. Layfayette St. Macomb, IL 61455	Ish Oberoi 438 New York Ln. Elk Grove Village, IL 60007	Ish Oberoi Elite Fuel Eight, Inc. 9 Elk Run Rd. Waterloo, IA 50703
Iowa Gas Group, Inc. Reg. Agent, Shital N. Mehta 438 New York Lane Elk Grove Village, IL 60007	USA Gas Supply Inc. Reg. Agent Farruch Pasha 2919 E. 14th Des Moines, IA 50316	

I. SUMMARY

This administrative order (order) requires you to pay an administrative penalty of \$10,000 within 60 days of receipt unless the order is appealed as provided in Division VII below. The penalty is assessed for operating underground storage tanks (USTS) at the referenced facility without an approved form of financial responsibility, failure to maintain continuous financial responsibility and failure to conduct a 2008-2009 third-party compliance inspection in violation of UST regulations. The order requires you to complete a third party compliance inspection. See Division V and VI for details.

Any questions regarding this order should be directed to:

Relating to technical requirements:
Paul Nelson, Environmental Specialist
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8779

Relating to legal issues:
Tamara Mullen, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/242-5817

Administrative Order
In Re: Elite Fuel Eight, Inc. et al

II. JURISDICTION

This order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director of the Iowa Department of Natural Resources (Department) to issue any order necessary to secure compliance with the Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in chapter 567 Iowa Administrative Code (IAC) 135. Iowa Code section 455B.109 and administrative rules in chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

1. Krause Gentle, LLC transferred ownership of property located at 3733 Easton Blvd, Des Moines, Iowa to Iowa Gas Group, Inc. (Iowa Gas) by deed recorded on November 28, 2007. Iowa Gas transferred ownership of the property to Elite Fuel Eight, Inc. (Elite Fuel 8) by deed recorded on December 28, 2007.
2. Elite Fuel 8 is an Illinois corporation doing business in Iowa. Elite Fuel 8 is not registered with the Iowa Secretary of State. Ish Oberoi is president of Elite Fuel 8 and upon information and belief a principal stockholder. Ish Oberoi is also the president and upon information and belief the principal stockholder in Elite Fuel One, Inc., Elite Fuel Two, Inc., Elite Fuel Three, Inc., Elite Fuel Four, Inc., Elite Fuel Five, Inc., Elite Fuel Six, Inc. and Elite Fuel Seven, Inc. all of which are Illinois companies registered with the Iowa Secretary of State and doing business or formerly doing business in Iowa. Upon information and belief, all of these corporations have owned or operated UST facilities.
3. Iowa Gas registered with the Department as the owner of petroleum USTS at 3733 Easton Blvd. on Department form 148 dated November 27, 2007. Paul Ghuman identified himself as the authorized representative of Iowa Gas. Paul Ghuman is president of Iowa Gas and upon information and belief a principal stockholder.
4. There are 6,000 and a 10,000 gallon petroleum USTS located at the 3733 Easton Blvd. Des Moines, Iowa facility.
5. At all times relevant to this order, Ish Oberoi has been the person in control of, or having responsibility for, the daily operation of the USTS at this location. He has been the primary contact person responsible for maintaining compliance with the regulatory requirements as stated in this order.
6. PMMIC, an UST insurance company, issued an insurance policy on the USTS located at 3733 Easton Blvd., Des Moines, Iowa. Iowa Gas is the named insured with an effective date of May 8, 2007 to May 7, 2008. PMMIC issued a policy with the same policy number identifying "Elite Fuel Eight, Inc." as the named insured and Ish Oberoi as an "additional insured" with an effective

Administrative Order
In Re: Elite Fuel Eight, Inc. et al

policy date of May 8, 2007 to May 7, 2008. PMMIC issued a renewal policy with effective dates of May 8, 2008 to May 7, 2009. The Department received a notice of cancellation from PMMIC stating the policy had been cancelled mid-term as of August 11, 2008 for failure to provide information required to maintain coverage.

7. By letter dated May 13, 2008, the Department sent a letter addressed to Ish Oberoi?? Paul Ghuman, Elite Fuel 8 notifying him that the UST Insurance policy would be terminated in ten days. The notice directed the recipient that it is illegal to operate the USTS or receive fuel without an approved financial responsibility mechanism such as insurance.

8. The Department sent a second letter to Mr. Ghuman Oberoi?? dated August 29, 2008 stating that operation of the USTS must cease immediately since the insurance had been cancelled. The letter required that the annual tank tags be returned to the Department and advised that the Department inspectors would inspect the site to confirm that operation of the USTS had ceased and tags removed to prevent further deliveries of fuel. The tank tags were not removed and returned to the Department.

9. The Department sent another letter to Mr. Ghuman Oberoi?? dated September 2, 2008 directing that operation of the USTS must cease.

10. The Department inspector visited the site on October 1, 2008 and observed a fuel delivery truck which had been called to deliver fuel. The inspector directed the driver not to make the fuel delivery. The inspector removed all tank tags from the tank fillpipes. The inspector determined that the fuel delivery company, Randolph's, Inc. had received orders to deliver fuel to four "Elite Fuel" facilities that day and had previously delivered fuel to these tanks subsequent to the insurance cancellation date of August 11, 2008.

11. By letter dated October 1, 2008, the Department authorized Randolph's, Inc. to deliver only enough fuel to the USTS as necessary to conduct tightness tests on the tanks.

12. USA Gas Supply Inc. registered as the UST owner with the Department on a registration form dated March 3, 2009. The Department authorized fuel to be delivered to the USTS at this location after the new owner had provided proof of financial responsibility and completed all required UST system tests. The Department received a certificate of insurance identifying Zurich Insurance Company as the insurer and USA Gas Supply Inc. as the named insured with effective dates of January 27, 2009 to January 27, 2010. The Zurich policy was not renewed and expired as of January 27, 2010. The Department received a certificate of insurance identifying Colony Insurance, Inc. as the insurer and USA Gas Supply Inc. as the named insured with effective coverage dates of February 8, 2010 to February 8, 2011.

13. There was no continuous financial responsibility covering these USTS after the PMMIC cancellation date of August 11, 2008 and until the Zurich insurance policy became effective January 27, 2009. There was a second lapse in coverage between the Zurich expiration date of January 27, 2010 and the Colony Insurance, Inc. effective date of February 8, 2010.

Administrative Order
In Re: Elite Fuel Eight, Inc. et al

14. The owners and operators have failed to retain a Department certified compliance inspector and complete a compliance inspection within the compliance dates of January 2008 to December 31, 2009.

IV. CONCLUSIONS OF LAW

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the UST program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTS constitutes a threat to the public health and safety and to the natural resources of the state. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTS. The Commission has adopted such rules in chapters 567 IAC 135 and 136. The Director of the Department may order any responsible UST owner or operator to take all corrective action consistent with Commission rules. See Iowa Code section 455B.474(1)(f)(11).

2. Iowa Code section 455B.471(6) defines "owner" of USTS. Iowa Gas registered with the Department as the UST owner on November 27, 2007 despite a change in property ownership to Elite Fuel 8 on December?? 28, 2007. Elite Fuel 8 has been the property owner at all times relevant to the order and is currently the property owner. Until documentation is provide to document UST ownership otherwise, Iowa Gas and Elite Fuel 8 have been UST owners as defined at all times relevant to the violations cited in this order and therefore responsible for compliance with the applicable terms of this order.

3. Iowa Code section 455B.471(5) defines an "operator" of USTS as "... a person in control of, or having responsibility for, the daily operation of the underground storage tank." Elite Fuel 8 operated the USTS systems since at least December ?? November of 2007. Ish Oberoi in his capacity as president of Elite Fuel 8 was the primary person having control of the daily operation and regulatory compliance of the UST system. Elite Fuel 8 and Ish Oberoi are operators as defined and responsible for compliance with the terms of this order. USA Gas Supply Inc. has been an operator of the USTS since at least January 2009 and is responsible for compliance with applicable terms of this order.

4. Owners and operators of USTS must maintain an approved financial assurance mechanism continuously until the tanks are permanently closed. See generally chapter 567 IAC 136 and 567 IAC 136.22. If insurance is the financial responsibility mechanism, owners and operators must obtain and provide proof of insurance using a certificate of insurance or endorsement the content of which is specified in 567 IAC 136.8.

5. All owners and operators are required to maintain records documenting proof of an approved form of financial responsibility. see 567 IAC 136.20. They must submit proof of financial responsibility to the Department upon request. 567 IAC 136.19.

Administrative Order
In Re: Elite Fuel Eight, Inc. et al

6. Iowa Gas, Elite Fuel 8, and Ish Oberoi in their capacity as UST owners and operators are jointly and severally responsible for operating USTS at this location after the PMMIC insurance cancellation date of August 11, 2008 and the failure to maintain a continuous financial responsibility mechanism until the USTS are closed. USA Gas Supply Inc. provided proof of insurance coverage effective January 27, 2009 until the expiration date of January 26, 2010. There was then another lapse in continuous coverage until the policy with Colony Insurance, Inc. took effect in February 2010.

7. Department rules require owners and operators to retain a Department certified compliance inspector and conduct a facility inspection every two years. An inspection was required to be completed between January 2008 and December 31, 2009. Iowa Gas, Elite Fuel 8, Ish Oberoi and USA Gas Supply Inc. were owners or operators during this compliance period and failed to complete a compliance inspection in violation of 567 IAC 135.20.

V. ORDER

THEREFORE, you are ordered to comply with the following provisions in order to redress violations:

1. Iowa Gas, Elite Fuel 8 and Ish Oberoi are jointly and severally responsible to pay an administrative penalty of \$10,000 to the order of the Iowa Department of Natural Resources within sixty (60) days of receipt of this order unless the order is appealed as provided in Division VII below. USA Gas Supply Inc. is jointly and severally responsible to pay \$4,000 of the total \$10,000 assessment to the Iowa Department of Natural Resources within sixty (60) days of receipt of this order unless the order is appealed.

2. Iowa Gas, Elite Fuel 8 and USA Gas Supply Inc. are ordered to retain a Department certified compliance inspector and complete an initial inspection within 14 days of receipt of this order. This inspection will be assigned to the delinquent 2008-2009 compliance period. A second compliance inspection shall be required within 24 months of this inspection with a separation of at least 6 months. The Department reserves all rights to take further enforcement and assess penalties based on violations discovered in that inspection or failure to take action to correct noted violations in accordance with Department rules. See 567 IAC 135.20.

VI. PENALTY

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for violation of the type cited in this order.

2. Iowa Code section 455B.109 authorizes the assessment of administrative penalties up to \$10,000 for violations of Iowa Code chapter 455B or rules, permits, and orders promulgated or issued pursuant to chapter 455B. 567 IAC chapter 10 was adopted by the Commission to implement this provision. Pursuant to rule 567 IAC 10.2, the Department has determined that a penalty should be assessed. The administrative penalty is determined as follows. The Department

Administrative Order
In Re: Elite Fuel Eight, Inc. et al

reserves the right to reassess the penalty rationale if on appeal, additional information warrants a modification.

ECONOMIC BENEFIT: Iowa Gas, Elite Fuel 8 and Ish Oberoi have avoided the cost of paying the insurance premium necessary to maintain continuous coverage after the PMMIC cancellation date of August 11, 2008 until the subsequent owner/operator established financial responsibility effective January 27, 2009. The estimated cost of the annual PMMIC policy is \$1,000 or about \$80 per month. For this factor, \$400 is assessed.

GRAVITY: Maintaining continuous coverage on UST systems is one of the most important regulatory requirements. Maintaining insurance coverage even after USTS are taken out of operation is essential since the insurance is "claims made" and not "occurrence" based. Iowa Gas, Elite Fuel 8 and Ish Oberoi continued to operate for some weeks after expiration of the PMMIC policy and allowed a policy to expire such that no continuous coverage was maintained. All the named parties failed to complete a third party compliance inspection for the 2008-2009 compliance period. This is a separate and distinct violation. For this factor, \$3,000 is assessed against Iowa Gas, Elite Fuel 8 and Ish Oberoi for the financial responsibility violation. All the named parties are assessed \$2,000 for the compliance inspection violation.

CULPABILITY: Iowa Gas, Elite Fuel 8 and Ish Oberoi, own and operate numerous UST facilities in Iowa and other states and should be aware of the financial responsibility requirements. They continued to accept fuel and operate the USTS knowing the PMMIC insurance had been cancelled, allowed it to expire mid-term and attempted to obtain further deliveries of fuel despite written directives that to do so was illegal. Department rules allow a maximum assessment of up to \$3,000. For this factor, \$3,000 is assessed. All the parties knew or should have known of the compliance inspection violations. For this violation, \$2,000 is assessed against all the named parties.

Total Penalty Assessment: A total of \$6,400 is assessed against Iowa Gas, Elite Fuel and Ish Oberoi for the financial responsibility violation and \$4,000 for the compliance inspection violation. Since this exceeds the statutory \$10,000, \$10,000 is assessed. Since USA Gas Supply Inc. is jointly and severally responsible for the compliance inspection violation, \$4,000 is jointly and severally assessed against USA Gas Supply Inc.

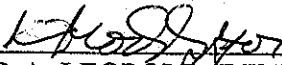
VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.476 and chapter 567 IAC 7 which adopts by reference chapter 561 IAC 7, the named parties may file a written notice of appeal to the Commission within 30 days of receipt of this order. The party should file this notice of appeal with the Director of the Department, and must identify the specific portion or portions of this order subject to appeal. The party must also include a short and plain statement of the reasons for appeal. A contested case hearing will then commence pursuant to Iowa Code chapter 17A and chapter 561 IAC 7.

Administrative Order
In Re: Elite Fuel Eight, Inc. et al

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.477. The Department reserves the right to request that the Attorney General initiate legal action based on the violation alleged in this order, as well as any subsequent violations in the event the party violates the order, including failure to timely pay any penalty.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23 day of

June, 2010

Copies to: Named parties, D. Wornson, E Douskey, FO 5, V (I)